

Space Imaging

Data Distribution Rights

- This End User License Agreement is the basis upon which Space Imaging L.P. ("Space Imaging") makes available to the "Customer" the aerial/space-based, remote sensed earth image data product (the "Product"). Customer accepts and agrees to the terms of this Agreement by doing any one of the following: **(a)** accepting, in whole or in part, a quotation describing the Product by any means (including the use of Customer's purchase order, whether or not that purchase order contains inconsistent terms and conditions); **(b)** breaking the seal on the package containing the Product; **(c)** installing or manipulating the Product on any computer hardware; **(d)** making any commercial use of the Product or any material derived from the Product; **(e)** damaging or destroying the Product; **(e)** retaining the Product for more than 15 days following receipt thereof. Customer agrees to acquire the Product, as licensee, upon the terms and conditions of this Agreement, which shall govern all licenses of Product between Space Imaging and Customer.
- GRANT OF LICENSE, PERMITTED USE. The Customer's "Permitted Use" is defined as one of the following:

X Research License:

Permits internal use of product by government agency-affiliated research organizations on multiple projects, with the primary research investigator identified at the start of each project.

Space Imaging retains all ownership rights in the Product, and Customer does not receive any such rights. Space Imaging grants Customer a non-transferable, non-exclusive, pre-paid (subject to payment of the purchase price for the Product) license to use the Products as specified below or in any quotation provided to Customer ("the Permitted Use"), and for no other use. Under this license, Customer may do the following:

- a. Reformat the Product into different formats or media from those in which it is delivered.
- b. Make one copy of the Product for Customer's internal archival or backup purposes.
- c. Distribute the Product, on a non-commercial basis, in a non-manipulateable (e.g. bit-map) format, or as part of a hard copy research report or publication
- d. Make the Product available to its consultants, agents and subcontractors for purposes otherwise consistent with the Permitted Use.
- e. Modify the Product, through manipulation techniques and/or the addition of other data, and

make copies of the resulting product, for research use by NASA as described in 6b.

■ **LIMITS ON LICENSE, PROHIBITED ACTIVITIES.**

Customer recognizes and agrees that the Product is property of Space Imaging, contains valuable assets and proprietary information of Space Imaging, and is provided to Customer on a confidential basis. Customer shall not do any of the following without Space Imaging's written permission:

a. Copy or reproduce (even if merged with other materials), other than as consistent with the Permitted Use. (Note: This restriction does not apply to Landsat data "enhanced" as provided in Space Imaging's publication dated September 3, 1993, as modified from time to time.)

b. Sell, license, transfer, disclose, the Products or use them in any manner not expressly authorized by this Agreement.

c. Alter or remove any copyright notice or proprietary legend contained in or on the Products. Customer agrees that any embodiment of the Products permitted under this Agreement will contain the following notice: "Includes material © Space Imaging L.P."

■ **EXCEEDING APPLICATION.**

Customer will, from time to time and as requested by Space Imaging, provide assurances to Space Imaging that it is using the Product consistent with the Permitted Use, and Customer grants Space Imaging access, at reasonable times and in reasonable manner, to the Product in Customer's hands, and to Customer's books, records and facilities to permit Space Imaging to verify appropriate use of the Product. Space Imaging's non-exercise of this right, or its failure to discover or object to any inappropriate use, shall not constitute its consent thereto or waiver of its rights. In the event Customer's use of the Product exceeds the Permitted Use, or if Customer otherwise violates the terms of this License, Space Imaging may, since remedies at law may be inadequate, in addition to its other remedies: (a) demand return of the Product; and/or (b) forbid and enjoin Customer's further use of the Product.

■ **LIMITED WARRANTY AND LIABILITY.**

Space Imaging warrants (a) that it has sufficient ownership rights in the Product to make the Product available to Customer under the terms hereof, free from the adverse claims of third parties; and (b) that the Product will, for ninety (90) days from the date of shipment, substantially conform to Space Imaging's specifications when used on appropriate computer hardware. The Products are complex and may contain some non-conformities, defects or errors. Space Imaging does not warrant that the Products will meet Customer's needs or expectations, that operations of the Products will be error free or uninterrupted, or that all non-conformities can or will be corrected. Customer must notify Space Imaging within the 90-day warranty period of any warranty claim. Space Imaging's SOLE OBLIGATION and Customer's SOLE REMEDY under

this Limited Warranty is that Space Imaging either, in its discretion, shall: (a) use reasonable efforts to repair or replace the Product or to provide an avoidance procedure within a commercially reasonable time so that the Product substantially conforms to the specifications contained in Space Imaging's documentation, or (b) refund the amount of the initial fee previously paid by Customer for the non-conforming Product.

This Limited Warranty is void if any non-conformity has resulted from accident, abuse, misuse, misapplication, or modification by someone other than Space Imaging. The Limited Warranty is for Customer's benefit only, and is non-transferable.

Space Imaging is not liable for any incidental or consequential damages associated with Customer's possession and/or use of the Product. This warranty is not applicable to extent that any provision of this warranty is prohibited by any federal, state or local law which cannot be preempted. This warranty gives Customer specific legal rights, and Customer may also have other rights which vary from state to state.

- **MISCELLANEOUS.** This is the exclusive and entire Agreement between Space Imaging and Customer regarding its subject matter, merging all prior or contemporaneous instruments or agreements and discussions between the parties. If any provision of this Agreement is declared invalid or unenforceable, the remaining provisions of this Agreement shall remain in effect.

■ **LICENSE ADDENDUMS**

a. ADDENDUM 1

The definition of a project under the Research License granted by Space Imaging for all products procured by NASA under contract No. NAS13-98048 is hereby amended to include NASA John C. Stennis Space Center application demonstration projects.

b. ADDENDUM 2

Space Imaging grants derived product distribution rights for products procured under NASA contract No. NAS13-98048 with the following limitations: 1. Derived product distribution is limited only to those derived products that result from application of a non-reversible process that ensures that the original Space Imaging product cannot be reversed-engineered, recovered or otherwise re-created. 2. Derived products may be distributed only to non-commercial research organizations and those organizations not involved in operational use of the derived products.